Supreme Court of the United States

OCTOBER TERM, 1945

No. 505

GEORGE C. HOLMBERG, FRANK C. BALL, CARL J. EASTERBERG, GEORGE F. HARDIE and PAT B. MORRIS, on behalf of themselves and all other creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis,

Petitioners,

vs.

CHARLES ARMBRECHT and GILBERT MILLER, BARBARA RICHARDS MICHEL, MURIEL RICHARDS PERSHING and DOROTHY RICHARDS HIRSHON, as Executors under the Last Will and Testament of JULES S. BACHE, deceased,

Respondents.

PETITIONERS' REPLY BRIEF

EDMUND BURKE, JR.,
Counsel for Petitioners.

FRANKLIN S. WOOD,
CLARENCE FRIED,
Of Counsel.

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The respondents have been unable to cite any authority wherein it is held that a federal court sitting in equity in a case founded on a right created by federal statute and in which defendants were found guilty of inequitable conduct, nevertheless, was bound by a state statute of limitations. They argue that there should be no distinction between the present case and the Guaranty Trust v. York case. We have already pointed out that the uniformity sought with respect to rights created under a state law, as was involved in the Guaranty case, requires the reverse treatment when a federally created right is involved.

Respondents on page 15 of their brief admit the wisdom of disregarding state law to prevent the frustration of a

federal policy involving an important private right such as the one upon which the D'Oench case was predicated. We do not understand that this Honorable Court will differentiate between important private rights and those of lesser importance. The significant federal policy contained in 12 U. S. C. A. 812 is self-evident and is expressly set forth in the footnote on page 7 of the government's brief *amicus curiae.*

Respondents place great stress upon the custom prevailing among stock brokers of purchasing securities in the names of nominees. They assert that in the ordinary course of business, stocks were carried in the names of nominees and refer to Mr. Stern's testimony on page 70 wherein he stated, "Yes, we had two nominees besides our own name, both of them working in the cage." There is nothing in this statement to indicate that Armbrecht was one of the "two nominees" and there is no proof in the record that Armbrecht acted in that capacity. Aside from the fact that this would make little difference, it is small wonder that the Trial Court rejected defendants' contention when considered in the light of their own contradictions. In the deposition of Morton F. Stern (taken before Jules S. Bache was served and became involved in this litigation and at a time when defendant Bache believed himself immune because more than ten years had elapsed since the bank closed and at the time when the defendant Charles Armbrecht was in default upon the purported service made in May, 1942), he testified (R. 24):

> "Q. Was it the practice of J. S. Bache & Co. to purchase bank stocks in the name of nominal parties? A. We never purchased any securities in names other than the actual purchaser."

At the time of trial, after Jules S. Bache was made a party defendant, Mr. Stern altered his testimony to conform to the changed situation (R. 70):

"Q. Are you familiar with the custom in respect of the registration of stock in the name of others, for customers and other? A. Oh, yes.

"Q. What was the custom in 1932 and for five or six years previous to that in regard to having stock registered in the name of nominees? * * * The Witness: Yes, we had two nominees besides our own name, both of them working in the cage."

No mater how euphemistic we may try to be we can not avoid the conclusion that the transfer was fraudulent and within the lines of cases which holds that a transfer made for the express purpose of avoiding the stockholders' liability is a fraud upon credits.

The contention that Armbrecht was always available and could easily have been located is utterly belied by the fact that as late as May, 1942, Armbrecht could not be found by the wholly disinterested postal employees of the United States Government (R. 85).

The factual matters were considered by the Trial Court and the question of credibility passed upon by him. His findings were not upset by the Circuit Court and cannot be considered here, since the findings are amply supported by the record.

Respectfully submitted,

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